OFFICE SUPREME COURT, U.S.
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JOHN F. DAVIS, CLERK

IN THE SUPREME COURT OF THE UNITED STATES

STATE OF ALABAMA, *by and through George C. Wallace as its Governor, and* GEORGE C. WALLACE *in his capacity as Governor of the State of Alabama,*

Plaintiffs,

VS.

UNITED STATES OF AMERICA *and* ROBERT S. McNamara, *individually and as Secretary of Defense of the United States of America,*

Defendants.

NO. 15 ORIG.

MOTION FOR LEAVE TO FILE ORIGINAL BILL OF COMPLAINT AND ORIGINAL BILL OF COMPLAINT

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IN THE SUPREME COURT OF THE UNITED STATES

STATE OF ALABAMA, by and through George C. Wallace as its Governor, and GEORGE C. WALLACE in his capacity as Governor of the State of Alabama,

Plaintiffs,

VS.

UNITED STATES OF AMERICA and ROBERT S. McNamara, individually and as Secretary of Defense of the United States of America

Defendants.

NO. _____

MOTION FOR LEAVE TO FILE ORIGINAL BILL OF COMPLAINT

Now comes the State of Alabama, acting by and through George C. Wallace as Governor of the State of Alabama, and George C. Wallace in his capacity as Governor of the State of Alabama and file this Motion, pursuant to Rule 9, Supreme Court Rules, for leave to file an original bill of complaint, which said bill of complaint is attached hereto, and made a part hereof as if fully set out herein in detail.

This the 17th day of May, 1963.

Attorneys for the Plaintiffs

IN THE SUPREME COURT OF THE UNITED STATES

STATE OF ALABAMA, by and through George C. Wallace as its Governor, and GEORGE C. WALLACE in his capacity as Governor of the State of Alabama,

Plaintiffs,

VS.

UNITED STATES OF AMERICA and ROBERT S. McNamara, individually and as Secretary of Defense of the United States of America

Defendants.

NO. _____

COMPLAINT

Now comes the State of Alabama, acting by and through George C. Wallace, as its Governor, and George C. Wallace in his capacity as Governor of the State of Alabama, and would show unto this Honorable Court as follows:

1. George C. Wallace is the Governor of the State of Alabama and he is presently acting as Governor of the State of Alabama. His residence and the seat of Government is Montgomery, Alabama. Robert S. McNamara is Secretary of Defense of the United States of America. His address is Washington, D. C.

2. This Honorable Court has original jurisdiction of this cause under the provisions of Article 3, Section 2, Clause 2 of the Constitution of the United States. This Honorable Court

also has jurisdiction of this cause pursuant to the provisions of Title 28, Section 2201, United States Code, and Title 28, Section 1251, United States Code.

3. Plaintiffs aver that heretofore on, to-wit: May 12, 1963, the President of the United States did direct the Defendant Robert S. McNamara, Secretary of Defense, to send members of the Armed Forces into the State of Alabama. Plaintiffs aver that the President of the United States cited the provisions of Title 10, Section 333, United States Code as authority for the sending of said members of the Armed Forces into the State of Alabama to suppress "domestic violence". Plaintiffs aver that Title 10, Section 333, United States Code is unconstitutional and void.

4. Plaintiffs aver that pursuant to the directive of the President of the United States and on order of the Defendant McNamara, members of the Armed Forces of the United States are deployed presently in the City of Birmingham, Alabama, and at two Federal reservations, viz: Fort McClellan, Alabama, and Maxwell Air Force Base, Alabama, and that the President of the United States has threatened to use said Armed Forces in Birmingham, State of Alabama, for the alleged purpose of suppressing domestic violence, all in violation of the sovereignty of the State of Alabama and the Constitution of the United States.

5. Plaintiffs aver that on and before, to-wit: May 12, 1963, Martin Luther King, Fred Shuttlesworth, Ralph Abernathy, Wyatt Tee Walker and other Negroes had led or incited unlawful parades and racial demonstrations in the City of Birmingham, Alabama, and that various demonstrators committed acts of violence upon police and law enforcement officials of the City of Birmingham, Alabama and the State of Alabama.

6. Plaintiffs aver that on, to-wit: May 11, 1963, two bombing incidents occurred in the City of Birmingham, Alabama by parties unknown at this time and that hundreds of Negroes rioted and caused severe personal injuries and property damage within the City of Birmingham, Alabama.

7. Plaintiffs aver that law enforcement officials of the State of Alabama, the County of Jefferson, State of Alabama, and the City of Birmingham, Alabama, have taken such measures as were necessary to suppress the domestic violence which has occurred within the State of Alabama and the City of Birmingham as hereinabove alleged. Plaintiffs aver that the duly constituted authorities of the State of Alabama, Jefferson County, Alabama, and the City of Birmingham are able to suppress the domestic violence which has occurred in Birmingham, Alabama and Plaintiffs aver that said constituted authorities are able and will not fail or refuse to suppress

domestic violence which may occur within the State of Alabama in the future.

8. Plaintiffs aver that neither the Legislature of the State of Alabama nor the Governor of the State of Alabama has made application to the United States of America or to the President of the United States of America for the sending of members of the Armed Forces of the United States to suppress domestic violence, but on the contrary, the Plaintiff George C. Wallace as Governor of the State of Alabama, has repeatedly requested the President of the United States to remove said members of the Armed Forces which have been sent to the State of Alabama, as aforesaid. The President of the United States has refused to rescind his order to the Defendant McNamara to send members of the Armed Forces of the United States into the State of Alabama for the alleged purpose of suppressing domestic violence in the State of Alabama.

9. Plaintiffs aver that the United States must guarantee to every State of the Union a republican form of government, and must protect each of them against invasion and upon application of the Legislature, or the Executive (when the Legislature cannot be convened) against domestic violence, under the provisions of Article 4, Section 4 of the Constitution of the United States.

10. Plaintiffs aver that the President of the United States exceeded his constitutional and statutory authority by directing the Defendant McNamara to deploy members of the Armed Forces in the State of Alabama for the alleged purpose of using them to suppress domestic violence under the circumstances as alleged hereinabove, and that the Defendant McNamara exceeded his constitutional and statutory authority.

11. There is, therefore, a justiciable controversy existing between the Plaintiffs and the Defendants, within the meaning of Title 28, Section 2201, United States Code.

12. Plaintiffs aver that irreparable harm will result unless the Defendants are restrained from deploying members of the Armed Forces in the State of Alabama with the intention of using said members of the Armed Forces to suppress domestic violence in the State of Alabama, unless and until the Legislature or the Executive (when the Legislature cannot be convened) makes application for the use of members of the Armed Forces of the United States under the provisions of Article 4, Section 4 of the Constitution of the United States.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs pray:

(a) That this Honorable Court will take jurisdiction of this cause and the parties hereto and will cause its process to issue to the Defendants commanding them to answer or

plead within the time allowed by law or the rules of this Honorable Court.

(b) That this Honorable Court will advance this cause on the docket and expedite the same.

(c) That this Honorable Court will declare the rights and other legal relations of the parties hereto, and will enter an order declaring that the Defendants are without authority to deploy members of the Armed Forces in the State of Alabama to suppress domestic violence unless and until the Legislature of the State of Alabama or the Executive (if the Legislature cannot be convened) makes application for such Armed Forces.

(d) That this Honorable Court will issue a temporary restraining order enjoining and restraining the Defendants, their agents, servants and employees, from deploying members of the Armed Forces in the State of Alabama to suppress domestic violence unless and until the Legislature of the State of Alabama or the Executive (if the Legislature cannot be convened) makes application for such Armed Forces.

(e) That after notice and a hearing this Honorable Court will issue a preliminary or permanent injunction enjoining and restraining the Defendants, their agents, servants and employees, from deploying troops of the Armed Forces in the

State of Alabama to suppress domestic violence unless and until the Legislature of the State of Alabama or the Executive (if the Legislative cannot be convened) makes application for such Armed Forces.

(f) That this Honorable Court will declare Title 10, Section 333, United States Code unconstitutional.

(g) That this Honorable Court will declare the Fourteenth Amendment to the Constitution of the United States null and void.

(h) That this Honorable Court will grant such other and further relief as may seem meet and proper in the premises.

This the 17th day of May, 1963.

George C. Wallace, as Governor of the State of Alabama.

Thos. F. Keech

Attorneys for the Plaintiffs

VERIFICATION

STATE OF ALABAMA)
MONTGOMERY COUNTY)

Before me Mabel Cowan, a Notary Public in and for the State of Alabama at Large, this date personally appeared Ruby C. Wallace, who is known to me and after being first duly sworn, deposes and says: That he has read the allegations of the foregoing Bill of Complaint and that the matters and things related and averred therein are true and correct to the best of his knowledge, information and belief, which matters and things he verily believes to be true as alleged in said Complaint.

Done this 17th day of May, 1963.

George C. Wallace

Sworn to and subscribed before me this 17th day of May, 1963.

Notary Public

CERTIFICATE

I hereby certify that I have served a copy of the Motion for Leave to file an Original Bill of Complaint and Original Bill of Complaint upon the Solicitor General, Department of Justice, Washington 25, D. C. by mailing a copy to him, postage prepaid, on this the 18th day of May, 1963.

John P. Nolan